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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/733,896 | 12/12/2000 | Carlos Pinzon | 05725.0806-00 | 5467 |

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EXAMINER

RAJGURU, UMAKANT K

ART UNIT PAPER NUMBER

1711

DATE MAILED: 01/28/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS 12

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | Examiner | Group Art Unit |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- Responsive to communication(s) filed on Oct 04, 2002 (paper no 8).
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1-299 is/are pending in the application.
 Of the above claim(s) 282-285 and 287 is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-281, 286 and 288-299 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement

Application Papers

- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- All Some* None of the:
- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 9 Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

1. A response (Paper No. 8), a supplemental IDS (Paper No. 9), a pre-amendment (Paper No. 10) and another supplemental IDS (Paper No. 11) have been filed resp. on October 4, 2002, October 23, 2002, June 27, 2002 and June 27, 2002.
2. Claims 1-281, 286 and 288-299 are under examination.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-281, 286 and 288-299 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crotty et al (USP 5,302,378) in view of Pavlin et al (USP 5,783,657) and Patel et al (USP 6,154,454).

This rejection is incorporated here by reference from prior Office Action Paper No. 7.

5. Applicant's arguments filed October 4, 2002 (Paper No. 8) have been fully considered but they are not persuasive.

Applicants' argument on page 4 of above paper that "Crotty does not disclose or exemplify compositions.... in the art to such a composition" is not persuasive because examples in a patent are for illustration. They do not limit the disclosed invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation for combination has been presented in earlier Office Action.

In response to applicant's argument that Patel is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Patel achieves stability by using a conditioning agent. Hence the same agent should be equally useful to stabilize the composition of Crotty.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication from the examiner should be directed to U.K. Rajguru whose telephone number is 703-308-3224. The examiner can generally be reached on Monday-Friday 9:30 am-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.


U.K. Rajguru/dh
January 21, 2003


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700